

DOCKET FILE
ORIGINAL
 Before the
 Federal Communications Commission
 Washington, D.C. 20554
 FEB 7 1994

DIS MM Docket No 93-33

In the Matter of

Amendment of Section 73.202(b), RM-8160
 Table of Allotments, RM-8233
 FM Broadcast Stations.
 (Oakhurst, Firebaugh and
 June Lake, California)¹

FIRST REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 11, 1994; Released: February 7, 1994

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 1544 (1993), issued in response to a petition filed on behalf of California Sierra Corporation ("petitioner"), licensee of Station KAAT-FM, Channel 296A, Oakhurst, California, proposing the substitution of Channel 276A for Channel 296A and modifica-

tion of its license accordingly. Additionally, to accommodate its proposal, petitioner requested the substitution of Channel 234A for Channel 276A at Firebaugh, California.² Petitioner filed supporting and reply comments. Comments were also filed by Patrick R. Ryan ("Ryan"), permittee of Station KMMM(FM), Madera, California, as well as by Yosemite Union High School District ("Yosemite"), Bass Lake School District ("Bass Lake") and Golden Oak Bank ("Golden Oak").³ Comments and a counterproposal were filed by Linda Ware ("Ware").⁴ A conflicting proposal was filed by Don Stewart ("Stewart") requesting the allotment of Channel 276A to June Lake, California.⁵ CVES also filed comments.⁶ Responsive comments were also filed by Harry J. Pappas ("Pappas"), licensee of Station KMPH-FM, Channel 298B, Hanford, California.⁷

2. As indicated in the *Notice*, petitioner's proposal is premised on its desire to increase the effective radiated power of Station KAAT(FM) to 6 kilowatts, a benefit from which it is presently precluded, due to the close proximity of Station KMMM(FM), Channel 297A, Madera, California. The distance between Oakhurst and Madera is 64.4 kilometers (40 miles) whereas 72 kilometers (45 miles) is required in this instance. Petitioner comments that adoption of its proposal would also alleviate interference it is receiving from Station KQLB(FM), Channel 295A, Los Banos, California, which recently became operational.

3. In response to the *Notice*, Stewart requested the allotment of Channel 276A to June Lake, California, as a first local aural service. The p distance between June Lake and Oakhurst is 71.5 kilometers (44.3 miles), whereas a distance of 115 kilometers (71 miles) is required in this instance.⁸ In an effort to accommodate each proposal, we have determined the availability of an alternate channel to

¹ June Lake has been added to the caption.

² As indicated in the *Notice*, Channel 276A at Firebaugh is vacant. A petition for reconsideration seeking reinstatement of its application for Channel 276A at Firebaugh was filed by Central Valley Educational Services, Inc. ("CVES") (File No. BPED-881017MD).

³ The comments of Ryan, Yosemite, Bass Lake and Golden Oak were not served on the petitioner, in violation of Section 1.420(c) of the Commission's Rules, and therefore they have not been accepted for consideration.

⁴ Ware's counterproposal is unacceptable. Ware requests the retention of Channel 296A at Oakhurst as a second local FM service, for which she expressed an interest in applying. However, Ware's counterproposal was late filed and was not served on the petitioner, by required by Section 1.420(c) of the Commission's Rules. Moreover, while Ware signed her counterproposal and provided an address, she failed to include an affidavit verifying that the statements contained in her comments are accurate to the best of her knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990).

⁵ Public Notice of the counterproposal was given May 12, 1993, Report No. 1940.

⁶ CVES' comments are unacceptable. CVES requests the retention of Channel 276A at Firebaugh for a future upgrade to

Channel 276B1, in the event its application for Channel 276A (File No. BPED-881017MD) is granted. Alternatively, CVES requests that Channel 276B1 be allotted to Oakhurst as that community's second local service for general application. CVES avers that other options are available to petitioner for a 6 kilowatt operation for Station KAAT(FM) at Oakhurst.

However, Channel 276B1 is ineligible for consideration at Oakhurst as we have no expression of interest in the higher class facility. See *Lopez and Dushore, Pennsylvania*, 7 FCC Rcd 854 (1992). Nor is CVES eligible to express an interest in the potential future use of Channel 276B1 at Firebaugh since the request for reconsideration of the dismissal of its application for Channel 276A at that community remains pending.

Moreover, even if CVES had been eligible to express an interest in Channel 276B1 at Oakhurst or Firebaugh, it did not provide a technical showing to demonstrate that the proposal would comply with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. See Section 1.401(c) of the Commission's Rules. See also, *Birmingham, Alabama*, 7 RR 2d 1649 (1966). As a result of our determination, we need not consider responsive comments related to CVES' proposal.

Pappas' comments are directed to the counterproposals filed by Ware and Stewart. In view of our rejection of Ware's counterproposal, as indicated *supra*, and our determination regarding Stewart's counterproposal, as discussed *infra*, Pappas' comments need not be considered.

⁸ Coordinates for unrestricted Channel 276A at June Lake are 37-47-06 and 119-04-06.

resolve the conflict between the mutually exclusive proposals. Specifically, we have determined that Channel 226A is available for consideration at June Lake, which permits the consideration of Channel 276A at Oakhurst without the need for a comparative analysis of the two proposals.⁹

4. However, we are unable to determine whether June Lake is a community for allotment purposes. Stewart merely comments that June Lake "... is a growing community" that "deserves its own local radio service." We note that June Lake is not listed in the 1990 U.S. Census nor incorporated, but is listed in the 1993 *Rand McNally Commercial Atlas and Marketing Guide*, which attributes it with a population of 900, and indicates that it has a post office. However, those factors, standing alone, are not sufficient to warrant a determination that June Lake is a *bona fide* community for allotment purposes. See *Oak Beach and Bay Shore, New York*, 57 RR 2d 1275 (1985). Therefore, since June Lake is neither listed in the U.S. Census nor incorporated, we believe that additional demographic data is required to assist us in determining whether it is a community for allotment purposes. Therefore, we will not allot a channel to June Lake at this juncture, but rather will issue a separate *Further Notice* in this proceeding requesting additional information in order to ascertain June Lake's status. See *Canton, Tioga and Ulysses, Pennsylvania*, 2 FCC Rcd 2055 (1987).

5. We believe the public interest would be served by substituting Channel 276A for Channel 296A at Oakhurst, California, and by substituting Channel 234A for Channel 276A at Firebaugh, California, since it could enable Station KAAT(FM) to increase its power to 6 kilowatts, thereby expanding its coverage area. As indicated in the *Notice*, Channel 276A can be allotted to Oakhurst in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's licensed site at coordinates 37-25-08 and 119-44-04. Additionally, Channel 234A can be substituted for Channel 276A at Firebaugh, California, without a site restriction at coordinates 36-51-30 and 120-27-12. Additionally, in the event CVES's application is reinstated at Firebaugh on reconsideration, Channel 234A may be used at the site proposed in its application at coordinates 36-47-30 and 120-30-00. Accordingly, we will serve a copy of this *Notice* on CVES. In the event CVES' application is reinstated, it may amend its application without the loss of cut off protection. See *Salamanca, New York and Bradford, Pennsylvania*, 50 FR 26208 (1985) and *Sanibel, Florida*, 50 FR 32706 (1985).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 24, 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Firebaugh, California	234A
Oakhurst, California	276A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of California Sierra Corporation for Station KAAT(FM), IS MODIFIED to specify operation on Channel 276A in lieu of Channel 296A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KAAT(FM)'s license, BLH-841123LW, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-841123LW, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Order* by Certified Mail, Return Receipt Requested, to the applicant for Channel 276A at Firebaugh, California, as follows: Central Valley Educational Services, Inc., 12550 Brookhurst Street, Garden Grove, California 92640.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED with respect to RM-8160 only.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁹ As a result of our determination, petitioner's responsive comments to Stewart's counterproposal will not be discussed.